

DOCKET NO. 584538

IN RE	ESPERANZA GONZALES GARCIA	§	BEFORE THE
D/B/A	MONA LISA CLUB	§	
LICENSE NO.	BE-419081	§	
		§	TEXAS ALCOHOLIC
		§	
DALLAS COUNTY,	TEXAS	§	
(SOAH DOCKET NO.	458-99-1568)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of December, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened on October 5, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 5, 1999. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

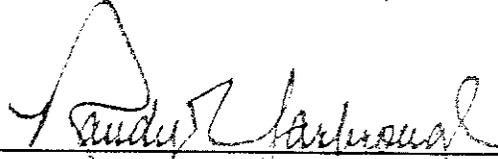
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's conduct surety bond is hereby **FORFEITED**.

**This Order will become final and enforceable on December 28, 1999**, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 7th day of December, 1999.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/pah

The Honorable Robert F. Jones, Jr.  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (817) 626-7448**

Shanee Woodbridge, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
**VIA FACSIMILE (512) 475-4994**

Esperanza G. Garcia  
d/b/a Mona Lisa Club  
**RESPONDENT**  
19509 FM 986  
Terrell, Texas 75160  
**CERTIFIED MAIL/RRR NO. Z 473 039 157**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 5, 1999

Doyme Bailey  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

**VIA CERTIFIED MAIL Z 283 051 852**

**Return Receipt Requested**

**RE: Docket No. 458-98-1568; Texas Alcoholic Beverage Commission vs. Esperanza Gonzales Garcia  
d/b/a Mona Lisa Club (TABC Case No. 584538)**

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to Esperanza Gonzales Garcia, Respondent, d/b/a Mona Lisa Club. For reasons discussed in the proposal, I recommend Nations Bank of Texas Certificate of Deposit, in the amount of \$5,000.00, numbered 757544, dated September 4, 1997, should be forfeited. Tex. Alco. Bev. Code § 11.11(b)(2).

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Jones, Jr.", written over a large, stylized flourish.

Robert F. Jones, Jr.  
Administrative Law Judge

RJ:ds

Enclosure

xc:

Shanee Woodbridge, State Office of Administrative Hearings, Austin, Texas - **Regular Mail**  
Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - **Regular Mail**; Esperanza Gonzales Garcia d/b/a Monca Lisa Club, 19509 Farm to Market Rd. 986, Terrell, Texa 75160 - **CERTIFIED MAIL NO. Z 283 051 851. RETURN RECEIPT REQUESTED**

DOCKET NO. 458-99-1568

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
	§	
VS.	§	OF
	§	
ESPERANZA GONZALES GARCIA D/B/A	§	
MONA LISA CLUB	§	
LICENSE NO. BE-419081	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 584538)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this forfeiture action against Esperanza Gonzales Garcia d/b/a Mona Lisa Club (Respondent). Staff sought forfeiture of Respondent's conduct surety bond, alleging Respondent had been finally adjudicated of committing three violations of the Alcoholic Beverage Code since September 1, 1995. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the full amount of the bond.

PROCEDURAL HISTORY

On October 5, 1999, a public hearing was convened before Robert F. Jones Jr., Administrative Law Judge (ALJ), in the State Office of Administrative Hearings at 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Commission's Legal Division. Respondent failed to appear and was not represented by an attorney. Staff moved for judgment, and the motion was granted.

REASONS FOR DECISION

Because Respondent failed to appear at the hearing, and Staff proved that Respondent had received appropriate notice of the hearing, jurisdiction, notice, the violation and recommended punishment are addressed in the Findings of Fact and Conclusions of Law without discussion.

LEGAL STANDARDS AND APPLICABLE LAW

The Texas Alcoholic Beverage Commission (TABC) is authorized under TEX. ALCO. BEV. CODE ANN. § § 11.11(b)(2) (Vernon 1999)(the Code), to forfeit the amount of a conduct surety bond if Respondent's license was revoked or on a final adjudication that the licensee had violated a provision of the Code. Under TABC's rule,

(1) When a license or permit is canceled, or a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond.

(2) The licensee or permittee may, within 30 days of the notice specified in paragraph (1) of this subsection, request hearing on the question of whether the criteria for forfeiture of the bond, as established by the Alcoholic Beverage Code, §11.11 and §61.13, and this rule have been satisfied. The hearing shall be conducted in accordance with the Administrative Procedure Act.

16 TEX. ADMIN. CODE § 33.24

#### FINDINGS OF FACT

1. Esperanza Gonzales Garcia d/b/a Mona Lisa Club (Respondent) was issued Beer Retailer's On Premise License BE-419081 on September 5, 1997.
2. Respondent's licensed premises was located at 8416 Denton Drive, Dallas, Dallas County, Texas.
3. Respondent has executed an assignment of account in lieu a conduct surety bond. The Assignment assigns and sets over to the Texas Alcoholic Beverage Commission of the State of Texas all right, title, and interest of whatever nature of Esperanza Gonzales Garcia in and to the insured account of Esperanza Gonzales Garcia in the Nations Bank of Texas evidenced by Certificate of Deposit in the amount of \$ 5,000.00, numbered 757544. The Assignment is dated September 4, 1997. A copy of Certificate of Deposit 757544. is attached to the Assignment. The Assignment bears the acknowledgment of the Nations Bank of Texas, 400 South Zang Boulevard, Dallas, Texas.
4. Respondent has committed three violations of the Alcoholic Beverage Code since September 1, 1995, to wit:
  - (a) On March 21, 1999, Respondent was in possession of a distilled spirit on the licensed premise, a violation of § 69.12;
  - (b) On March 21, 1999, Respondent was in possession of an unauthorized alcoholic beverage (i.e., wine and champagne) on the licensed premises, a violation of § 69.12; and

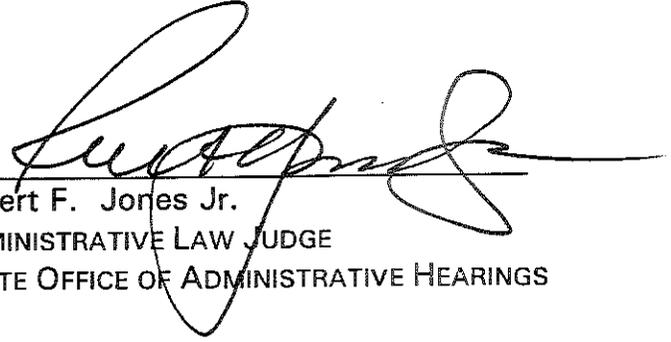
(c) On June 4, 1998, Respondent issued an insufficient funds check to a beer distributor, a violation of § 61.73(b).

5. The Staff of the Texas Alcoholic Beverage Commission (Staff) sent Respondent written notice of Staff's intent to forfeit the bond by a letter dated May 26, 1999, addressed to Esperanza Gonzales Garcia d/b/a Mona Lisa Club at 19509 F. M. 986, Terrell, Dallas County, Texas. Respondent's receipt of the letter was evidenced by Respondent's signature on page two of the letter.
6. On August 17, 1999, Staff issued its Notice of Hearing. The notice was directed to Esperanza Gonzales Garcia d/b/a Mona Lisa Club at 19509 F. M. 986, Terrell, Dallas County, Texas. According to the certificate of service, the notice was served by certified mail, return receipt requested. The certified mail return receipt was signed on August 20, 1999.
7. On October 5, 1999, a hearing convened before ALJ Robert F. Jones Jr., SOAH, at 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent failed to appear.

#### CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (Vernon 1999).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. §2003.021 (Vernon 1999).
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051, and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 1 - 5, Nations Bank of Texas Certificate of Deposit in the amount of \$ 5,000.00, numbered 757544, dated September 4, 1997, should be forfeited. TEX. ALCO. BEV. CODE § 11.11(b)(2).

SIGNED this 5<sup>th</sup> day of November, 1999.

A handwritten signature in black ink, appearing to read "Robert F. Jones Jr.", written over a horizontal line.

Robert F. Jones Jr.  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS